

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
CLIFTON ROBERTSON	:	
for Redetermination of a Deficiency or for Refund of	:	DETERMINATION
New York State and New York City Personal Income	:	DTA NO. 815733
Taxes under Article 22 of the Tax Law and the New York	:	
City Administrative Code for the Year 1992.	:	

Petitioner, Clifton Robertson, 814 Tilden Street, Bronx, New York 10467-6027, filed a petition for redetermination of a deficiency or for refund of New York State and New York City personal income taxes under Article 22 of the Tax Law and the New York City Administrative Code for the year 1992.

A hearing was held before Timothy J. Alston, Administrative Law Judge, at the offices of the Division of Tax Appeals, One Centre Street, New York, New York, on December 15, 1997 at 10:00 A.M., with all briefs to be submitted by February 23, 1998, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Kevin R. Law, Esq., of counsel).

ISSUE

Whether petitioner has substantiated certain itemized deductions claimed on his 1992 personal income tax return.

FINDINGS OF FACT

1. Petitioner, Clifton Robertson, filed his 1992 New York State Resident Income Tax Return (Form IT-201) on July 15, 1993. Petitioner claimed the following New York itemized deductions on his return:

Taxes ¹	\$ 4,743.00
Interest	\$ 10,665.00
Charitable Contributions	\$ 3,012.00
Job & Miscellaneous Contributions	\$ 3,745.00

2. By letter dated October 10, 1995, the Division of Taxation (“Division”) advised petitioner that his 1992 income tax return was being audited and requested documentation to substantiate petitioner’s claimed itemized deductions. Petitioner submitted certain documentation in response to the Division’s request.

3. On July 5, 1996 the Division issued to petitioner a Notice of Deficiency which asserted a total amount due of \$2,263.30. The notice indicated that this total included additional New York State income tax due for the year 1992 of \$1,178.00 and additional New York City income tax due for 1992 of \$658.00, plus penalties imposed pursuant to Tax Law § 685(b)(1) and (2), and interest.

4. In its calculation of the income tax deficiencies, the Division disallowed as unsubstantiated all itemized deductions claimed on petitioner’s return except for mortgage

¹Petitioner claimed a deduction of \$10,347.00 for taxes on line 32 of the return. However, \$5,604.00 of this amount was for New York State and City income tax withheld and was therefore subtracted from petitioner’s total New York itemized deduction pursuant to the subtraction adjustment of line 40.

interest in the amount of \$7,301.25 paid to Great Western Bank. The Division also increased petitioner's income by \$80.00, an adjustment which was not contested by petitioner.

5. At hearing, petitioner submitted a Mortgage Interest Statement (Form 1098) for the year 1992 which indicated payment of mortgage interest of \$1,023.00 and real estate taxes of \$2,141.70 to Surrey Cooperative Apartments by Lena and "Clifford" [sic] Robertson. The Form 1098 listed Lena Robertson's social security number under the heading "Payer's social security number." Lena Robertson is petitioner's sister.

6. Petitioner submitted no other evidence regarding his claimed deductions for interest or taxes.

7. Also submitted into evidence at the hearing was a copy of an undated letter addressed to petitioner from the Pastor of the Bright Temple African Methodist Episcopal Church. The letter stated that the church's records showed that petitioner had contributed \$2,646.45 in tithes and offerings for 1992. At the hearing petitioner testified that he did not recall making such contributions.

8. Petitioner submitted no other evidence regarding his claimed deduction for charitable contributions.

9. Petitioner asserted that his claimed job and miscellaneous deductions consisted of \$3,556.00 for uniforms and equipment, \$840.00 for dry cleaning, \$450.00 for union dues, and \$150.00 for books and publications. He submitted copies of receipts totaling \$3,556.00 for uniforms and equipment, and at the hearing testified that he made such purchases for his job as a corrections officer. Petitioner also testified that, in 1992, his employer reimbursed corrections officers \$1,000.00 for purchases of uniforms. Petitioner did not know whether the \$1,000.00 reimbursement was included in his gross earnings for 1992.

10. Based on the foregoing, the Division conceded that petitioner substantiated that he incurred expenses of \$2,556.00 for uniforms and equipment during 1992 and that petitioner was entitled to a deduction for this expense to the extent that it exceeded 2% of petitioner's 1992 adjusted gross income (*see*, Internal Revenue Code § 67). According to the Division's calculations, petitioner is entitled to a miscellaneous deduction of \$1,305.00 for 1992.

11. Petitioner submitted no documentation to substantiate his claimed expenses for dry cleaning, union dues or books and publications.

CONCLUSIONS OF LAW

A. Regarding the claimed deductions for mortgage interest and real estate taxes, although the Form 1098 issued by Surrey Cooperative Apartments shows that mortgage interest and real estate taxes were paid in the amounts of \$1,023.00 and \$2,141.70, respectively (*see*, Finding of Fact "5"), petitioner has not shown that he personally incurred these expenses. Specifically, the Form 1098 lists both petitioner and his sister as the payers or borrowers. Moreover, the 1098 lists petitioner's sister's social security number as the payer's social security number. Without additional proof showing that petitioner and not his sister incurred these expenses, petitioner's claim for deductions in respect of amounts paid to Surrey Cooperative Apartments is properly denied. Petitioner offered no other evidence of interest or tax expenses to support these claimed deductions.

B. Petitioner's claimed charitable deduction was also properly denied. In general, charitable contributions (allowable under Internal Revenue Code § 170) may be substantiated by a cancelled check, a receipt or a reliable written record setting forth the name of the donee, the date of the contribution and the amount of the contribution (*see*, Treas Reg § 1.170A-13). Here, the letter submitted to substantiate \$2,646.45 of the claimed charitable contribution deduction

does not set forth either the dates or the amounts of petitioner's contributions (*see*, Finding of Fact "7"). Additionally, the regulations provide that a factor indicating that a written record is reliable for the purpose of substantiating a claimed charitable contribution is the contemporaneous nature of the written record (*see*, Treas Reg § 1.170A-13[a][2][i][A]). Here, the letter submitted is undated; it has not been shown, therefore, to have been issued contemporaneously with the claimed contribution. Furthermore, petitioner testified at the hearing that he did not recall contributing money to the Bright Temple African Methodist Episcopal Church and he offered no evidence of any other charitable contributions to support his claimed deduction. The evidence presented thus fails to substantiate petitioner's deduction for charitable contributions.

C. Regarding petitioner's claimed job and miscellaneous expense deduction, the Division has conceded that petitioner is entitled to a deduction of \$2,556.00 (*see*, Finding of Fact "10"). The Division denied a deduction for \$1,000.00 of petitioner's uniform expenses because petitioner was unsure as to whether his employer's reimbursement of \$1,000.00 was included in his gross earnings for 1992. Given petitioner's uncertainty on this point, the Division's denial with respect to this \$1,000.00 was proper. Additionally, since petitioner offered no documentation with respect to his claimed expenditures for dry cleaning, union dues or books and publications, deductions in respect of such claimed expenses are also properly denied.

D. The petition of Clifton Robertson is granted to the extent indicated in Conclusion of Law "C", and the Notice of Deficiency dated July 5, 1996, as modified, is sustained.

DATED: Troy, New York
June 25, 1998

/s/ Timothy J. Alston

ADMINISTRATIVE LAW JUDGE